



INLAND REVENUE BOARD OF MALAYSIA

**TAX TREATMENT FOR A
COMPANY THAT ESTABLISHES
A SPECIAL PURPOSE VEHICLE
FOR THE ISSUANCE OF SUKUK
– SECTION 60I INCOME TAX
ACT 1967**

PUBLIC RULING NO. 8/2023

Translation from the original Bahasa Malaysia text

DATE OF PUBLICATION: 15 DECEMBER 2023



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Published by
Inland Revenue Board of Malaysia

First edition

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DIRECTOR GENERAL'S PUBLIC RULING

Section 138A of the Income Tax Act 1967 (ITA) provides that the Director General is empowered to make a Public Ruling in relation to the application of any provisions of the ITA.

A Public Ruling is published as a guide for the public and officers of the Inland Revenue Board of Malaysia. It sets out the interpretation of the Director General in respect of the particular tax law and the policy as well as the procedure applicable to it.

The Director General may withdraw this Public Ruling either wholly or in part, by notice of withdrawal or by publication of a new Public Ruling.

**Director General of Inland Revenue,
Inland Revenue Board of Malaysia.**

1. Objective

The objective of the Public Ruling (PR) is to clarify the tax treatment for a company that establishes a Special Purpose Vehicle (SPV) for the issuance of sukuk under section 60I of the Income Tax Act 1967 (ITA).

2. Related Provisions of Law

- 2.1 This PR takes into account laws which are in force as at the date this PR is published.
- 2.2 The provisions of the ITA relating to this PR are subsection 60I(1), subsection 60I(2), subsection 60I(3), subsection 60I(3A) and subsection 60I(4) of the ITA.
- 2.3 The relevant subsidiary legislation referred to in this PR is as follows:
 - 2.3.1 Income Tax (Deduction for Expenditure on Issuance of Sukuk and Retail Sukuk Structured pursuant to the Principle of Wakalah) Rules 2021 [P.U.(A) 5/2021] which replaces [P.U.(A) 117/2019] and [P.U.(A) 118/2019]
 - 2.3.2 Income Tax (Deduction for Expenditure on Issuance or Offering of Sustainable and Responsible Investment Sukuk) (Amendment) Rules 2021 [P.U.(A) 2/2021] and Income Tax (Deduction for Expenditure on Issuance or Offering of Sustainable and Responsible Investment Sukuk) Rules 2017 [P.U.(A) 221/2017].

3. Interpretation

The terms used in this PR have the following meanings:

- 3.1 "Underlying asset" refers to a security, index, currency, commodity or other asset/ reference or combination of such assets/ reference.
- 3.2 "Shariah Advisory Council" (SAC) means the Shariah Advisory Council established under the section 31ZI of the Securities Commission Malaysia Act 1993. [Act 498]
- 3.3 "Obligor" means an entity that is specified to be an obligor and is contractually obliged to honour the financial obligations of the issuer arising from the issuance of the sukuk.

- 3.4 "Originator" in relation to asset backed sukuk means any entity that is seeking to transfer or dispose of its assets to a SPV in a securitization transaction.
- 3.5 "Securities Commission Malaysia" (SCM) means the Securities Commission Malaysia established under section 3 of the Securities Commission Malaysia Act 1993 [Act 498].

4. Introduction to the Provisions of Section 60I of ITA

- 4.1 Currently, to obtain financing through the Islamic capital market, companies may establish SPV for the purpose of fund raising via issuance of sukuk.
- 4.2 To promote Malaysia as an Islamic capital market hub and considering that SPV is established to facilitate the channeling of funds through the issuance of sukuk, the provisions under Section 60I of the ITA were introduced with effect from the year of assessment 2007 to provide the following incentives:
- 4.2.1 The SPV is not subject to income tax and does not have to comply with administrative procedures under the ITA.
- 4.2.2 Companies establishing the SPV are given deductions on the issuance costs of sukuk incurred by the SPV. The income received by the SPV is considered as income of the company that established the SPV and is subject to income tax.
- 4.3 These incentives are given with the condition that the SPV is established for purpose of fund raising via issuance of sukuk approved by the SCM.

5. Special Purpose Vehicle (SPV)

5.1 SPV Definition

- 5.1.1 Under subsection 60I(4) of the ITA, "SPV means a company incorporated under the Companies Act 1965 or a company incorporated under the Offshore Companies Act 1990 which has made an election under section 3A of the Labuan Offshore Business Activity Tax Act 1990 and established solely for the purpose of complying with the principles of shariah in the issuance of sukuk but excludes a company which issues asset-backed securities in a securitization transaction lodged with the Securities Commission or approved by the Labuan Financial Services Authority".

- 5.1.2 Generally, an SPV is a separate legal entity established by the company to isolate the financial business risks. Its legal status as a separate company ensures its obligations are secured even if the parent company goes bankrupt. For this reason, SPV is sometimes referred to as a “Bankruptcy Remote Entity”.
- 5.1.3 Originator/ Obligor can establish SPV as a limited liability partnership, trust, corporation, limited liability company and other types of business entities.
- 5.1.4 SPV is widely used as a method of restructuring assets in business financial transactions. Two commonly practiced structuring methods are on-balance sheet or off-balance sheet as follows:
- (a) In on-balance sheet SPV structuring, the Originator/ Obligor will establish a wholly-owned SPV to take ownership of assets but will retain direct ownership and control over the SPV itself. This type of on-balance sheet SPV structure is commonly used within a group structure for accounting, tax and administrative purposes.
 - (b) On the other hand, for off-balance sheet SPV structuring, it is typically used for secured financing transactions and can be established by the Originator/ Obligor or the financing party depending on the transaction’s needs. SPV will be legally isolated (or orphaned) from the Originator/ Obligor and independent from other transaction parties, such as the financier. From an accounting perspective, this type of SPV structure is usually not part of the operator/ beneficiary or financing group, as neither party has a direct ownership interest in the SPV, meaning asset is off-balance sheet for the operator/ beneficiary.

5.2 The Purposes of SPV

5.2.1 There are several purposes for establishing an SPV which are as follows:

(a) Financing

SPV can be used to finance new projects without increasing the debt burden of the company and without diluting existing shares. This allows investors to invest in specific projects without directly investing in the parent company. Such a structure is commonly used to finance large infrastructure

projects.

(b) **Securitization**

Securitization is a common reason for the establishment of SPV. It is a process of issuing securities by selling certain financial assets to a third party in order to obtain cash or as an instrument to acquire new funds at a lower and more attractive cost compared to borrowing directly from financial institutions.

Financial assets that generate future cash flows will be sold by the company in need for liquidity or new funds to the third party, which is SPV, for cash. To pay for the purchase of these assets, the SPV will issue debt securities to investors based on the future cash flows of the purchased assets as collateral. Investors will receive returns through future cash flows managed by the SPV.

(c) **Risk Reduction**

Any company to undertake a project or operation with significant risks will establish an SPV to isolate the risks involved from the parent company (Originator/ Obligor).

(d) **Asset Transfer**

Certain assets may be difficult to transfer directly. Therefore, a company can create an SPV to own these assets. When the company wants to transfer these assets, it can sell the SPV as part of a merger and acquisition process.

(e) **Capital Enhancement**

Since assets have been transferred to the SPV, the company's credit quality will improve. Therefore, the company can raise additional capital from financial institutions at better loan rates. This gives the company an advantage in obtaining funds at a lower rate by isolating assets into the SPV.

6. Islamic Financial Instruments - Sukuk

6.1 Definition of Sukuk

Under section 2(1) of the ITA, sukuk has the same meaning as assigned to it under the Capital Markets and Services Act 2007.

According to SCM which is the main regulatory authority for sukuk in Malaysia, sukuk refers to a certificate of equal value which evidence undivided ownership or investment in the assets using principles and concepts endorsed by the SAC. SCM has provided various guidelines to give a clear understanding to investors and companies issuing sukuk, ensuring sukuk issuance in Malaysia is in compliance with the relevant provisions. For further information on sukuk, please visit website <https://www.sc.com.my/>.

6.2 Sukuk Structure

There are two types of sukuk structures in the capital market, namely asset based sukuk and asset backed sukuk as follows:

6.2.1 Asset based sukuk

Asset based sukuk does not give legal ownership rights to the assets used as the basis for the issued sukuk. On the other hand, the sukuk issuer simply transfers the beneficial ownership of the underlying asset to the sukuk holders. Given that there is no legal transfer of ownership of the underlying asset to sukuk holders, the underlying asset remains on the balance sheet of the Obligor.

As such, asset based sukuk tend to exhibit a risk-return profile similar to conventional bonds. Bondholders are usually listed *pari passu* with other unsecured creditors in the event of default and they rely on the creditworthiness of the Obligor for the repayment of their principal and profits. Similarly, in the event of default, sukuk holders are not able to claim against the asset which is held by the SPV on their behalf.

Overall, asset based sukuk sets a financial obligation on the Obligor to make periodic return (profits) and repay the principal when the sukuk mature. However, if the Obligor default, the sukuk holders will only have limited right of disposal because they will be required to sell the asset back to the Obligor. Due to this, the credit assessment of the Obligor will be the key factor affecting the credit quality and the sukuk rating.

Asset based sukuk is treated as bond from the perspective of law for the purpose of taxation.

6.2.2 Asset backed sukuk

The asset backed sukuk, on the other hand, involves the actual transfer of ownership through “true sale” of the underlying assets by the originator to the SPV (Bankruptcy Remote Entity). The payment obligations of the sukuk are derived from the cash flows generated by the underlying assets.

The Originator, who wish to raise funds, will sell a group of assets for the purpose of generating income through securitisation transactions that meet the two technical criteria mentioned above, namely “true sale” and “bankruptcy remoteness”. True sale from a legal perspective and bankruptcy remoteness will ensure that the creditors of the Originator cannot reclaim the assets because it has been separated from the Originator's balance sheet in the event of bankruptcy.

In short, asset backed sukuk refers to a structure that involves securitization, bankruptcy remoteness and the transfer of legal ownership of underlying assets resulting from a true sale transaction.

In asset backed sukuk, sukuk holders have recourse to the asset and not to the Originator. The actual performance of the underlying asset will determine the returns to the sukuk holders. If the underlying asset is performing while the Originator is facing bankruptcy, the sukuk holders' payment will not be interrupted. If the underlying asset is not performing, the sukuk holders will be affected because they have no recourse to the Originator.

6.2.3 Comparison between asset based sukuk and asset backed sukuk:

Features	Asset based sukuk	Asset backed sukuk
Ownership	Involves the transfer of beneficial ownership of the underlying asset to sukuk holders, but not legal title Unsecured where sukuk holders rank <i>pari passu</i>	Involves asset backing, transfer of legal title ownership and bankruptcy remoteness Actual performance of the asset determines the return to sukuk holders

	with unsecured creditors	
Underlying Assets	Any Shariah-compliant tangible assets, receivables, intangible assets or business ventures	Any Shariah-compliant tangible assets, receivables, intangible assets or business ventures
Accounting Treatment	On-balance sheet (for Obligor or issuer)	Usually designed as off-balance sheet (for Originator or issuer)
Recourse	Sukuk holders have a recourse to the Obligor or the issuer only (but not the asset)	Sukuk holders have recourse to the assets that backed the sukuk only
Source of income for sukuk holders	The main source of payment usually comes from the Obligor/ issuer's cash flow and not necessarily from sukuk assets	The main source of payment is the revenue generated from the underlying sukuk assets
Funding cost	Market-driven, depending on the Obligor/ issuer	Capital-driven, depending on the strength of the asset cash flow
In the event of default	Ownership of asset is not on sukuk holders	Ownership of asset is on sukuk holders
Rating	Its rating depends on the strength of Obligor/ issuer	Its rating depends on the strength of the asset's cash flow

6.2.4 A brief comparison of tax treatment between asset based sukuk and asset backed sukuk:

Features	Asset based sukuk	Asset backed sukuk
Legal references	The provisions of Section 60I of the ITA is applicable	Income Tax (Asset-Backed Securitization) Regulations 2014 [P.U.(A) 170/2014] is applicable
Income and expenses incurred by the SPV	The SPV is not subject to tax or tax administrative procedures. Any source of income of the SPV is considered as the source of income of the Obligor/ issuer	Any income of SPV is considered as a single source-business income and expenses incurred pursuant to securitization transactions are deductible
Disposal/ transfer of assets	No disposal/ transfer of assets. Assets still remain in the Obligor/ issuer's balance sheet	Asset disposal/ transfer occurs. The assets are separated from the Originator's balance sheet

7. Tax Treatment

This PR aims to explain the tax treatment under the provisions of Section 60I of the ITA specifically to SPV which is established solely for the issuance of sukuk other than asset backed sukuk. Therefore, this tax treatment only applies to asset based sukuk or similar instruments.

Regarding the tax treatment on sukuk, subsection 2(7) of the ITA states "Any reference in this Act to interest shall apply, *mutatis mutandis*, to gains or profits received and expenses incurred, in lieu of interest, in transaction conducted in accordance with the Shariah".

This provision establishes equality of tax treatment between interest in bonds and profits in sukuk. The income received and expenses incurred in sukuk transactions are deemed to be similar to the tax treatment of interest in conventional financing arrangements.

7.1 Tax treatment under Section 60I of the ITA

Section 60I of the ITA is introduced to provide specific treatment to SPV established solely for issuing sukuk other than the asset backed sukuk.

7.1.1 Tax treatment for companies that establish SPV solely for issuing sukuk

Under subsection 60I(1) to subsection 60I(3) of the ITA, the income received and the issuance costs incurred by the SPV are deemed to be received and incurred by the Originator/ Obligor which is the company that established the SPV. The SPV is not subject to income tax and does not have to comply with administrative procedures under the ITA. The Originator/ Obligor, who established the SPV, is responsible for the tax assessment on all sources of income earned by the SPV and must comply with all the provisions under the ITA.

The application of Section 60I of the ITA is limited only to one-to-one relationship specifically between the Originator/ Obligor and the SPV. In this regard, if other subsidiary companies are also involved as guarantors for the issuance of sukuk, apart from the Originator/ Obligor, Section 60I of the ITA is not applicable. Even though there are no restrictions imposed under the provisions, the existence of multiple claiming entities can lead to cost sharing and claim manipulation, resulting in risk mitigation.

7.1.2 Broadening the tax treatment for companies which established SPV to include Real Estate Investment Trust (REIT) or Property Trust Fund (PTF) – subsection 60I(3A) of the ITA

The existing provisions apply to companies that establish SPV solely for the purpose of issuing sukuk. This SPV is exempt from complying with any provisions under the ITA. The company that establishes the SPV is responsible for the tax assessment on all sources of income earned by the SPV and must comply with all the provisions under the ITA.

The amendment under subsection 60I(3A) aims to extend the tax treatment under subsection 60I(1) to subsection 60I(3) of the ITA to unit trusts approved by SCM who established SPV solely for the purpose of the issuance of sukuk. With this amendment, REIT or PTF is responsible for the tax assessment on all income earned by the SPV and must comply with all the provisions under the ITA. This amendment comes into effect from the year of assessment 2015.

7.1.3 Standardization of tax treatment for SPV

The provision under subsection 60I(4) of the ITA has been introduced to promote the issuance of sukuk and to standardize the tax treatment on SPV, the special tax treatment given to SPV established under the Companies Act 2016 is extended to SPV established under the Offshore Companies Act 1990. This treatment is provided to SPV that makes the election under section 3A of the Labuan Offshore Business Activity Tax Act 1990 to be taxed under the ITA. This amendment is effective starting from the year of assessment 2010.

Example 1

Tax treatment of the sukuk issuance costs borne by the SPV

Global Rintis Sdn Bhd (GRSB) was established in 1991 and presently it is a manufacturer of rubber-based products which is exported to 95 countries.

In 2019, a company functioning as an SPV, Prima Rintis Berhad (PRB), was incorporated under GRSB with a specific purpose of issuing a sukuk program that has been approved by SCM.

According to GRSB (Originator/ Obligor), the funds obtained from this sukuk program will be utilized entirely and solely by the group of companies for business purposes as follows:

- (a) Refinancing of debt or financing existing debt
- (b) Repayment of intercompany loans
- (c) Financing working capital
- (d) Other corporate purposes

According to the provisions of subsection 60I(1) of the ITA, the income and expenses of PRB (SPV company established solely for the issuance of sukuk) are considered to be the income and expenses of GRSB (Originator/ Obligor).

Therefore, the issuance costs of sukuk borne by PRB (SPV) are allowed as tax deductions subject to the prescribed conditions at the GRSB (Originator/ Obligor) level is fulfilled.

Example 2

REIT/ PTF that established an SPV

Excel REIT Sukuk Berhad (ERSB) is an SPV established in 2018 under Excel Real Estate Investment Trust (Excel REIT) specifically for the purpose of raising financial funds on behalf of Excel REIT through sukuk issuance.

The amendment to subsection 60I(3A) of the ITA effective from the year of assessment 2015, aims to extend the tax treatment under subsection 60I(1) to subsection 60I(3) of the ITA to unit trusts approved by SCM as REIT or PTF that establish SPV solely for the purpose of sukuk issuance.

Therefore, starting from the year of assessment 2015, the establishment of SPV by unit trusts approved by SCM as REIT or PTF, is exempted from any obligations under the ITA including the submission of the Income Tax Return Form.

In this case, if the conditions under Section 60I of the ITA are fulfilled, the income of ERSB which is an SPV, is considered as income to Excel REIT which is the Originator/ Obligor. ERSB is exempted from any obligations under the ITA including not being required to file an Income Tax Return Form, effective from the year of assessment 2015.

7.2 Tax treatment if the provisions of Section 60I of the ITA are not applicable

- 7.2.1 For a parent company that has established an SPV but does not meet the conditions under the provisions of Section 60I of ITA, the established SPV may claim deductions for the expenditure on the issuance of sukuk through the subsidiary legislation of the Income Tax Rules (Deduction for Expenditure on Issuance of Sukuk) P.U.(A) 5/2021.
- 7.2.2 The P.U.(A) 5/2021 allows the deduction of expenses incurred by the company on the issuance of sukuk approved by SCM or Labuan Financial Services Authority. The "company" referred to under these Rules is a company resident in Malaysia and incorporated under the Companies Act 2016 or Labuan Companies Act 1990.

Example 3

Tax treatment if the Originator/ Obligor is not a "company"

Bank Perusahaan Berhad (BPB) is a cooperative established under the Cooperative Ordinance 1948.

In 2021, BPB issued sukuk under the Wakalah Sukuk Program amounting to RM10 billion through an SPV, namely Perusahaan Sukuk Berhad (PSB).

Subsection 60I(1) of the ITA is only applicable to a "company" that establishes an SPV solely for the issuance of sukuk.

PSB is an SPV established by BPB which is a cooperative and not a "company". Therefore, Section 60I is not applicable to PSB.

P.U.(A) 5/2021 allows the amount of expenditure and twice the amount of additional expenditure from adjusted income for an equivalent amount of prescribed expenses incurred by the company on the issuance of sukuk approved by SCM or the Labuan Financial Services Authority.

The meaning of "company" under P.U.(A) 5/2021 refers to a company that is resident in Malaysia and incorporated under the Companies Act 2016 or the Labuan Companies Act 1990.

Despite Section 60I of the ITA not being applicable to PSB (SPV), if PSB fulfills the meaning of "company" under P.U.(A) 5/2021 as well as being a company that issues Sukuk Wakalah on behalf of the Originator/ Obligor, then PSB is eligible to claim the expenses for the issuance of sukuk under P.U.(A) 5/2021.

In conclusion, based on the assessment of this case, PSB does not fall under the scope of Section 60I of the ITA. However, PSB can claim the expenses of issuing sukuk directly (without going through the Originator/ Obligor) as it has fulfilled the meaning of a "company" under P.U.(A) 5/2021.

Example 4

Tax treatment if SPV is established by an appointed trustee

A company that serves as an SPV has been incorporated for the purpose of issuing sukuk.

However, the SPV's shareholding is owned by an appointed trustee and not by Synergy Sdn Bhd (SSB) which is the Originator/ Obligor.

Generally, a trust is an arrangement created when there is a legal transfer of ownership by the owner of the property/ assets (the settlor, grantor or creator of the trust) to an appointed person (the trustee) with instructions that the trustee holds and manages the property/ assets for the benefit of another person (one beneficiary or a few beneficiaries).

In sukuk issuance, the trustee is appointed by the issuer to serve as an intermediary between the issuer and the beneficiaries. The trustee is responsible for safeguarding the interests of both parties, especially in the event of issuer default.

Based on the facts in this case where SSB has appointed a trustee to establish an intermediary company (SPV) for sukuk issuance, such structure does not meet the requirements of Section 60I of the ITA. This is due to the fact that there is no direct relationship between the Originator/ Obligor and the intermediary company (SPV).

Therefore, the Originator/ Obligor is not considered "a company that establishes an SPV" for the purpose of Section 60I of the ITA.

Example 5

Tax treatment if SBK is jointly established by the Originator/ Obligor and other subsidiary companies

AB Berhad (ABB) intends to carry out an integrated development project involving the phased construction of a commercial centre which includes office towers, retail lots, apartments and a hotel.

ABB has entrusted its wholly-owned subsidiary, BC Sdn Bhd (BCSB), to execute this project. In this regard, BCSB has incorporated several wholly-owned subsidiaries to undertake specific developments within this project.

The specific developments to be undertaken by BCSB and its wholly-owned subsidiaries are as follows:

Company name	Project developments
BC Sdn Bhd (BCSB)	Build and own office towers in commercial centre
DE Sdn Bhd (DESB)	Build and own retail lots in commercial centre

DE Sdn Bhd (DESB)	Build and own retail lots in commercial centre
FG Sdn Bhd (FGSB)	Develop apartments in commercial centre for sale
JK Sdn Bhd (JKSB)	Build and own a hotel next to a commercial centre

All of the above companies require financing to implement their respective development projects. Therefore, SPV has been incorporated solely for the purpose of issuing a sukuk program approved by SCM.

SPV is jointly owned by all four subsidiary companies where each company holds a 25% stake in SPV. The amount of financing required by each company will be determined at the inception of SPV. The proceeds obtained by the SPV from the Sukuk Program will be channeled to the four companies through inter-company loans and the loan terms are the same as the terms of the sukuk.

The issue that arises is whether the provisions of Section 60I of the ITA is applicable to this case as SPV has been jointly established by the Originator/Obligor and several other subsidiary companies solely for the issuance of sukuk under the Wakalah principle approved by the SCM.

In this case, because SPV is also owned by other subsidiary companies besides the Originator/Obligor, the provisions of Section 60I of the ITA are not applicable.

Section 60I of the ITA is only applicable in cases where a company (Originator/Obligor) establishes an SPV on a one-to-one basis solely for the purpose of issuing sukuk.

Example 6:

Tax treatment if there are other subsidiary companies involved as guarantors for the issuance of sukuk apart from the Originator/Obligor

Telco Network Sdn Bhd (TNSB) is a company under the Telco Link Group, incorporated in Malaysia in 2010 and engaged in providing telecommunication network facilities.

Starting from the year 2020, TNSB has established an SPV named Eastlink Sukuk Berhad (ESB). The main activity of ESB is to raise funds through sukuk issuances.

Under this sukuk program, ESB intends to issue Sukuk Wakalah up to RM3 billion in nominal value jointly guaranteed by TNSB and two other subsidiary companies under the Telco Link Group namely Telco Matrix Sdn Bhd (TMSB) and Telco Arena Sdn Bhd (TASB). This Sukuk program has obtained approval from the SCM.

The first sukuk issuance was completed on 1st June 2021 with a nominal value of RM1.3 billion.

The purpose of issuing sukuk is to finance capital expenditures, investments, working capital, loan refinancing, operational expenses and other expenditures for the group of companies.

In this case, ESB does not meet the criteria of SPV under Section 60I of the ITA due to the application of Section 60I is limited to a one-to-one basis relationship between the Originator/ Obligor and the SPV.

Hence, if there are other subsidiary companies involved as guarantors in the issuance of sukuk apart from the Originator/ Obligor, Section 60I of the ITA would not be applicable. Even though there are no restrictions imposed by the SCM, the existence of more than one claimant company may lead to cost-sharing risks among each entity and could potentially lead to manipulating claims.

However, given that ESB (SPV) has fulfilled the meaning of "company" and has issued an approved sukuk program, ESB is eligible to claim the deduction for sukuk issuance expenses under P.U.(A) 5/2021.

At the same time, TNSB as the Originator/ Obligor, is not eligible to claim the deduction of sukuk issuance expenses. Similarly, the subsidiary companies, TMSB and TASB are also not eligible to claim the deduction of the sukuk issuance expenses.

From this case, it can be summarized that the application of Section 60I of the ITA is limited to a one-to-one basis relationship between the Originator/ Obligor and the SPV.



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Date of Publication: 15 December 2023**

8. Disclaimer

The examples in this PR are for illustrative purposes only and are not comprehensive.

**Director General of Inland Revenue,
Inland Revenue Board of Malaysia.**